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7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN JOSE DIVISION**

10 COLE UNGER, and STEVEN
 11 PRESCOTT, on behalf of themselves and
 12 all others similarly situated,

Case No. 5:25-cv-01163-EJD-VKD

13 Plaintiffs,

Hon. Edward J. Davila

v.

14 THE WALT DISNEY COMPANY,

NOTICE

15 Defendant.

16
 17 On June 6, 2025, Defendant Disney’s counsel informed the undersigned (“*Unger*
 18 *Counsel*”) that it had reached a settlement in principle during a mediation with plaintiffs’ counsel
 19 in the related action *Biddle v. Walt Disney Co.*, No. 5:22-cv-07317-EJD (N.D. Cal.) (“*Biddle*
 20 *counsel*”). To *Unger Counsel*’s surprise, they were told that the terms of the agreement purported
 21 to resolve all of the claims in both the *Biddle* action—on behalf of the DirectTV- and YouTube-
 22 subscriber classes—and this action, on behalf of a separate Fubo-subscriber class. Soon
 23 thereafter, the *Biddle* parties filed a joint notice with the Court informing it of the settlement in
 24 principle, as well as *Biddle* counsel’s intention to move for permission to act authoritatively for
 25 the Fubo class and to request a stay of both actions. ECF No. 147.

26 Plaintiffs—Fubo subscribers and class representatives (“*Unger Plaintiffs*”—file this
 27 Notice for two reasons: (1) to inform the Court of the facts surrounding the putative settlement in
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1 principle, and (2) to indicate the *Unger* Plaintiffs' intent to intervene in the *Biddle* case to protect
 2 their interests and those of the Fubo-subscriber class they represent.

3 To start, there is no settlement in principle with respect to the claims alleged by Plaintiffs
 4 and the proposed class (Fubo subscribers) in this case. Only *Unger* Counsel represent the *Unger*
 5 Plaintiffs. Yet *Unger* Counsel did not participate in the mediation, nor were they invited to
 6 participate or even told that it was happening. As a result, the *Unger* Plaintiffs were not
 7 represented at the mediation nor given any input into the terms of any settlement in principle.

8 As the Court is aware, the *Biddle* complaint does not allege any claims on behalf of a
 9 class of Fubo subscribers. As a result, *Biddle* counsel does not represent any Fubo-subscriber
 10 class or its interests. Nor does *Biddle* counsel represent the *Unger* Plaintiffs, who have filed this
 11 separate action on behalf of a Fubo-subscriber class. Thus, *Biddle* counsel does not have a
 12 fiduciary duty to act in the best interests of the Fubo class. Only *Unger* Counsel does. And there
 13 has been no determination by the Court otherwise.

14 Despite all of this, *Biddle* counsel unilaterally engaged in secret settlement negotiations
 15 purportedly on behalf of a Fubo-subscriber class that it does not represent and that it knows is
 16 ably represented by *Unger* Counsel. This conduct is not in the best interests of the Fubo-
 17 subscriber class, as was made evident by *Biddle* counsel's own statements to the Court at the
 18 May 15, 2025 hearing and summarized in detail by the *Unger* Plaintiffs' Brief Regarding Case
 19 Management Issues, filed on May 30, 2025. ECF No. 68. This opportunism should not be
 20 countenanced, especially given that the *Biddle* parties were on notice of potential conflicts in
 21 having the same counsel represent multiple classes in both cases. *Id.*

22 If Disney would like to resolve the *Unger* action, separately or in conjunction with the
 23 *Biddle* case, *Unger* Counsel welcomes the opportunity and is prepared to engage in such
 24 discussions.

25 In the interim, however, in order to protect their significant interests, *Unger* Plaintiffs will
 26 be moving to intervene in the *Biddle* case. This will allow the *Unger* Plaintiffs to respond to any
 27 motion that may interfere with their rights or those of the Fubo-subscriber class. Indeed, in its
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1 Notice to the Court, *Biddle* counsel has made clear that it intends to seek authority from the
 2 Court under Federal Rule of Civil Procedure 23(g) to “seek preliminary approval on behalf of the
 3 Fubo class members.” *Unger* Counsel will invariably seek to respond to this on both procedural
 4 and legal/substantive grounds, as well as any motion to stay some or all of the *Unger*
 5 proceedings, which *Biddle* counsel also suggests it will make.

6 Finally, if any settlement is executed in the *Biddle* action that infringes on or attempts to
 7 resolve any of the claims in *Unger* or the rights of a Fubo-subscriber class, *Unger* Plaintiffs may
 8 exercise their rights pursuant to Court-approved procedures to object to the settlement in whole
 9 or in part if and when preliminary approval is granted.

10 *Unger* Counsel have provided a courtesy copy of this Notice to *Biddle* counsel.

12 Dated: June 9, 2025

13 Respectfully submitted,

14 */s/ Gregory Asciolla*
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